

1 **DRIVING UNDER THE INFLUENCE SENTENCING**

2 **REVISIONS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Scott K. Jenkins**

6 House Sponsor: Lee B. Perry

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to sentencing requirements for driving under the
11 influence violations.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that an impaired driving plea is not available to a person who has certain
15 prior convictions;

16 ▶ requires the court to impose, for a felony driving under the influence violation, an
17 order requiring the person to obtain a screening and assessment for alcohol and
18 substance abuse and treatment as appropriate;

19 ▶ requires the court to order the installation of the ignition interlock system, at the
20 person's expense, for all motor vehicles registered to that person and all motor
21 vehicles operated by that person if a person is convicted of a driving under the
22 influence violation within 10 years of a prior conviction;

23 ▶ provides that a person who operates a motor vehicle without an ignition interlock
24 device as ordered by the court is in violation of driving without an ignition interlock
25 system; and

26 ▶ makes technical corrections.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **41-6a-502.5**, as last amended by Laws of Utah 2010, Chapter 109

34 **41-6a-505**, as last amended by Laws of Utah 2013, Chapter 71

35 **41-6a-512**, as last amended by Laws of Utah 2008, Chapter 226

36 **41-6a-518**, as last amended by Laws of Utah 2011, Chapter 421

37

38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **41-6a-502.5** is amended to read:

40 **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**
41 **requirements.**

42 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of
43 Section **41-6a-502** committed on or after July 1, 2008, may be entered as a conviction of
44 impaired driving under this section if:

45 (a) the defendant completes court ordered probation requirements; or

46 (b) (i) the prosecutor agrees as part of a negotiated plea; and

47 (ii) the court finds the plea to be in the interest of justice.

48 (2) A conviction entered under this section is a class B misdemeanor.

49 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of
50 probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

51 (ii) If the defendant fails to appear before the court and establish successful completion
52 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an
53 amended conviction of Section **41-6a-502**.

54 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of
55 conviction.

56 (b) The court may enter a conviction of impaired driving immediately under
57 Subsection (1)(b).

58 (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor
59 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one
60 degree.

61 (5) (a) The court shall notify the Driver License Division of each conviction entered
62 under this section.

63 (b) Beginning on July 1, 2012, a court shall, monthly, send to the Division of
64 Occupational and Professional Licensing, created in Section 58-1-103, a report containing the
65 name, case number, and, if known, the date of birth of each person convicted during the
66 preceding month of a violation of this section for whom there is evidence that the person was
67 driving while impaired, in whole or in part, by a prescribed controlled substance.

68 (6) (a) The provisions in Subsections 41-6a-505(1), (2), and [~~(3)~~] (4) that require a
69 sentencing court to order a convicted person to participate in a screening, an assessment, or an
70 educational series, or obtain substance abuse treatment or do a combination of those things,
71 apply to a conviction entered under this section.

72 (b) The court shall render the same order regarding screening, assessment, an
73 educational series, or substance abuse treatment in connection with a first, second, or
74 subsequent conviction under this section as the court would render in connection with applying
75 respectively, the first, second, or subsequent conviction requirements of Subsection
76 41-6a-505(1), (2), or [~~(3)~~] (4).

77 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section
78 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the
79 reporting court notifies the Driver License Division that the defendant is participating in or has
80 successfully completed the program of a driving under the influence court.

81 (b) The provisions of Subsection (7)(a) do not apply to a report concerning:

- 82 (i) a CDL license holder; or
- 83 (ii) a violation that occurred in a commercial motor vehicle.

84 (8) The provisions of this section are not available to a person who has a prior
85 conviction as that term is defined in Subsection 41-6a-501(2).

86 Section 2. Section **41-6a-505** is amended to read:

87 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
88 **drugs, or a combination of both violations.**

89 (1) As part of any sentence for a first conviction of Section **41-6a-502**:

90 (a) the court shall:

91 (i) (A) impose a jail sentence of not less than 48 consecutive hours;

92 (B) require the person to work in a compensatory-service work program for not less
93 than 48 hours; or

94 (C) require the person to participate in home confinement of not fewer than 48
95 consecutive hours through the use of electronic monitoring in accordance with Section
96 **41-6a-506**;

97 (ii) order the person to participate in a screening;

98 (iii) order the person to participate in an assessment, if it is found appropriate by a
99 screening under Subsection (1)(a)(ii);

100 (iv) order the person to participate in an educational series if the court does not order
101 substance abuse treatment as described under Subsection (1)(b);

102 (v) impose a fine of not less than \$700; and

103 (vi) order probation for the person in accordance with Section **41-6a-507**, if there is
104 admissible evidence that the person had a blood alcohol level of .16 or higher; and

105 (b) the court may:

106 (i) order the person to obtain substance abuse treatment if the substance abuse
107 treatment program determines that substance abuse treatment is appropriate; or

108 (ii) order probation for the person in accordance with Section **41-6a-507**.

109 (2) If a person is convicted under Section **41-6a-502** within 10 years of a prior
110 conviction as defined in Subsection **41-6a-501(2)**:

111 (a) the court shall:

112 (i) (A) impose a jail sentence of not less than 240 consecutive hours;

113 (B) require the person to work in a compensatory-service work program for not less

114 than 240 hours; or

115 (C) require the person to participate in home confinement of not fewer than 240
116 consecutive hours through the use of electronic monitoring in accordance with Section
117 [41-6a-506](#);

118 (ii) order the person to participate in a screening;

119 (iii) order the person to participate in an assessment, if it is found appropriate by a
120 screening under Subsection (2)(a)(ii);

121 (iv) order the person to participate in an educational series if the court does not order
122 substance abuse treatment as described under Subsection (2)(b);

123 (v) impose a fine of not less than \$800; and

124 (vi) order probation for the person in accordance with Section [41-6a-507](#); and

125 (b) the court may order the person to obtain substance abuse treatment if the substance
126 abuse treatment program determines that substance abuse treatment is appropriate.

127 (3) Under Subsection [41-6a-503](#)(2), if the court suspends the execution of a prison
128 sentence and places the defendant on probation:

129 (a) the court shall impose:

130 (i) a fine of not less than \$1,500;

131 (ii) a jail sentence of not less than 1,500 hours; and

132 (iii) supervised probation; and

133 [~~(iv) an order requiring the person to obtain a screening and assessment and substance
134 abuse treatment at a substance abuse treatment program providing intensive care or inpatient
135 treatment and long-term closely supervised follow-through after treatment for not less than 240
136 hours; and]~~

137 (b) in lieu of Subsection (3)(a)(ii), the court may require the person to participate in
138 home confinement of not fewer than 1,500 hours through the use of electronic monitoring in
139 accordance with Section [41-6a-506](#).

140 (4) For Subsection (3)(a) or Subsection [41-6a-503](#)(2)(b), the court shall impose an
141 order requiring the person to obtain a screening and assessment for alcohol and substance

142 abuse, and treatment as appropriate.

143 [~~(4)~~] (5) (a) The requirements of Subsections (1)(a), (2)(a), [~~and~~] (3)(a), and (4) may
144 not be suspended.

145 (b) Probation or parole resulting from a conviction for a violation under this section
146 may not be terminated.

147 [~~(5)~~] (6) If a person is convicted of a violation of Section 41-6a-502 and there is
148 admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall
149 order the following, or describe on record why the order or orders are not appropriate:

150 (a) treatment as described under Subsection (1)(b), (2)(b), or [~~(3)(a)(iv)~~] (4); and

151 (b) one or more of the following:

152 (i) the installation of an ignition interlock system as a condition of probation for the
153 person in accordance with Section 41-6a-518;

154 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
155 device as a condition of probation for the person; or

156 (iii) the imposition of home confinement through the use of electronic monitoring in
157 accordance with Section 41-6a-506.

158 Section 3. Section 41-6a-512 is amended to read:

159 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

160 (1) (a) The prosecution shall state for the record a factual basis for a plea, including
161 whether or not there had been consumption of alcohol, drugs, or a combination of both, by the
162 defendant in connection with the violation when the prosecution agrees to a plea of guilty or no
163 contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an
164 original charge of a violation of Section 41-6a-502 for an offense committed before July 1,
165 2008:

166 (i) reckless driving under Section 41-6a-528; or

167 (ii) an ordinance enacted under Section 41-6a-510.

168 (b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows
169 whether there was consumption of alcohol, drugs, or a combination of both, by the defendant,

170 in connection with the violation.

171 (2) The court shall advise the defendant before accepting the plea offered under this
172 section of the consequences of a violation of Section 41-6a-528.

173 (3) The court shall notify the Driver License Division of each conviction of Section
174 41-6a-528 entered under this section.

175 (4) (a) The provisions in Subsections 41-6a-505(1), (2), and [~~(3)~~] (4) that require a
176 sentencing court to order a convicted person to participate in a screening, an assessment, or an
177 educational series or obtain substance abuse treatment or do a combination of those things,
178 apply to a conviction for a violation of Section 41-6a-528 under Subsection (1).

179 (b) The court shall render the same order regarding screening, assessment, an
180 educational series, or substance abuse treatment in connection with a first, second, or
181 subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would
182 render in connection with applying respectively, the first, second, or subsequent conviction
183 requirements of Subsections 41-6a-505(1), (2), and [~~(3)~~] (4).

184 Section 4. Section 41-6a-518 is amended to read:

185 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost --**

186 **Impecuniosity -- Fee.**

187 (1) As used in this section:

188 (a) "Commissioner" means the commissioner of the Department of Public Safety.

189 (b) "Ignition interlock system" or "system" means a constant monitoring device or any
190 similar device certified by the commissioner that prevents a motor vehicle from being started
191 or continuously operated without first determining the driver's breath alcohol concentration.

192 (c) "Probation provider" means the supervisor and monitor of the ignition interlock
193 system required as a condition of probation who contracts with the court in accordance with
194 Subsections 41-6a-507(2) and (3).

195 (2) (a) In addition to any other penalties imposed under Sections 41-6a-503 and
196 41-6a-505, and in addition to any requirements imposed as a condition of probation, the court
197 may require that any person who is convicted of violating Section 41-6a-502 and who is

198 granted probation may not operate a motor vehicle during the period of probation unless that
199 motor vehicle is equipped with a functioning, certified ignition interlock system installed and
200 calibrated so that the motor vehicle will not start or continuously operate if the operator's blood
201 alcohol concentration exceeds a level ordered by the court.

202 (b) If a person convicted of violating Section [41-6a-502](#) was under the age of 21 when
203 the violation occurred, the court shall order the installation of the ignition interlock system as a
204 condition of probation.

205 (c) (i) If a person is convicted of a violation of Section [41-6a-502](#) within 10 years of a
206 prior conviction as defined in Subsection [41-6a-501](#)(2), the court shall order the installation of
207 the interlock ignition system, at the person's expense, for all motor vehicles registered to that
208 person and all motor vehicles operated by that person.

209 (ii) A person who operates a motor vehicle without an ignition interlock device as
210 required under this Subsection (2)(c) is in violation of Section [41-6a-518.2](#).

211 [~~(c)~~] (d) The division shall post the ignition interlock restriction on the electronic
212 record available to law enforcement.

213 [~~(d)~~] (e) This section does not apply to a person convicted of a violation of Section
214 [41-6a-502](#) whose violation involves drugs other than alcohol.

215 (3) If the court imposes the use of an ignition interlock system as a condition of
216 probation, the court shall:

217 (a) stipulate on the record the requirement for and the period of the use of an ignition
218 interlock system;

219 (b) order that an ignition interlock system be installed on each motor vehicle owned or
220 operated by the probationer, at the probationer's expense;

221 (c) immediately notify the Driver License Division and the person's probation provider
222 of the order; and

223 (d) require the probationer to provide proof of compliance with the court's order to the
224 probation provider within 30 days of the order.

225 (4) (a) The probationer shall provide timely proof of installation within 30 days of an

226 order imposing the use of a system or show cause why the order was not complied with to the
227 court or to the probationer's probation provider.

228 (b) The probation provider shall notify the court of failure to comply under Subsection
229 (4)(a).

230 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification
231 under Subsection (4)(b), the court shall order the Driver License Division to suspend the
232 probationer's driving privileges for the remaining period during which the compliance was
233 imposed.

234 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable
235 to excuse the probationer's failure to comply with the court's order.

236 (5) (a) Any probationer required to install an ignition interlock system shall have the
237 system monitored by the manufacturer or dealer of the system for proper use and accuracy at
238 least semiannually and more frequently as the court may order.

239 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the
240 court or the person's probation provider.

241 (ii) The report shall be issued within 14 days following each monitoring.

242 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the
243 reasonable costs of leasing or buying and installing and maintaining the system.

244 (b) A probationer may not be excluded from this section for inability to pay the costs,
245 unless:

246 (i) the probationer files an affidavit of impecuniosity; and

247 (ii) the court enters a finding that the probationer is impecunious.

248 (c) In lieu of waiver of the entire amount of the cost, the court may direct the
249 probationer to make partial or installment payments of costs when appropriate.

250 (d) The ignition interlock provider shall cover the costs of waivers by the court under
251 this Subsection (6).

252 (7) (a) If a probationer is required in the course and scope of employment to operate a
253 motor vehicle owned by the probationer's employer, the probationer may operate that motor

254 vehicle without installation of an ignition interlock system only if:

- 255 (i) the motor vehicle is used in the course and scope of employment;
- 256 (ii) the employer has been notified that the employee is restricted; and
- 257 (iii) the employee has proof of the notification in the employee's possession while
- 258 operating the employer's motor vehicle.

259 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
260 probationer subject to this section for personal use, no exemption under this section shall apply.

261 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
262 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
263 system shall notify the employer and obtain consent in writing from the employer to install a
264 system in the employer-owned motor vehicle.

265 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
266 by a probationer subject to this section is not a motor vehicle owned by the employer and does
267 not qualify for an exemption under this Subsection (7).

268 (8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
269 the commissioner shall make rules setting standards for the certification of ignition interlock
270 systems.

271 (b) The standards under Subsection (8)(a) shall require that the system:

- 272 (i) not impede the safe operation of the motor vehicle;
- 273 (ii) have features that make circumventing difficult and that do not interfere with the
274 normal use of the motor vehicle;
- 275 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;
- 276 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
277 concentration exceeds a specified level;
- 278 (v) work accurately and reliably in an unsupervised environment;
- 279 (vi) resist tampering and give evidence if tampering is attempted;
- 280 (vii) operate reliably over the range of motor vehicle environments; and
- 281 (viii) be manufactured by a party who will provide liability insurance.

282 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
283 independent laboratory tests relied upon in certification of ignition interlock systems by other
284 states.

285 (d) A list of certified systems shall be published by the commissioner and the cost of
286 certification shall be borne by the manufacturers or dealers of ignition interlock systems
287 seeking to sell, offer for sale, or lease the systems.

288 (e) (i) In accordance with Section 63J-1-504, the commissioner may establish an
289 annual dollar assessment against the manufacturers of ignition interlock systems distributed in
290 the state for the costs incurred in certifying.

291 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the
292 manufacturers on a fair and reasonable basis.

293 (f) The commissioner shall require a provider of an ignition interlock system certified
294 in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10,
295 Ignition Interlock System Program Act.

296 (9) There shall be no liability on the part of, and no cause of action of any nature shall
297 arise against, the state or its employees in connection with the installation, use, operation,
298 maintenance, or supervision of an interlock ignition system as required under this section.